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VIA ECF

Hon. Loretta A. Preska
Chief Judge, Southern District of New York
United States Courthouse
500 Pearl Street
Room 2220

Re: BofI Federal Bank v. Seeking Alpha Inc., 16-MISC-025

Dear Chief Judge Preska:

We represent BofI Federal Bank ("BofI") in connection with a November 23, 2015 subpoena (the "Subpoena") issued to Seeking Alpha, Inc. ("Seeking Alpha") in connection with an action pending in the United States District Court for the Southern District of California, Case No. 3:15-cv-02353-BAS-NLS (the "Underlying Action"). The Underlying Action relates to claims by BofI against a former employee, Charles Matthew Erhart, arising from Mr. Erhart's theft and dissemination of BofI's confidential, privileged and proprietary information. BofI has obtained a temporary restraining order ("TRO") in the Underlying Action which, among other things, precludes Mr. Erhart from continuing to disseminate BofI's confidential information. See the Declaration of Alejandro E. Moreno (Dkt. No. 2) at Exhibit B. The Subpoena is very limited and seeks the user information for two authors who posted articles on Seeking Alpha's website that reference much of the confidential information stolen by Mr. Erhart.

Seeking Alpha has refused to comply with BofI's straightforward Subpoena, which required BofI to commence this action to compel compliance. In fact, Seeking Alpha has affirmatively obstructed BofI's valid Subpoena. BofI first sought to serve Seeking Alpha at its address on Seventh Avenue in Manhattan that it has registered with the New York Department of State, but was informed that Seeking Alpha was no longer a tenant at that address.¹ On November 24, 2015, BofI attempted to serve the Subpoena on Seeking Alpha at its New York headquarters located at 52 Vanderbilt Avenue in Manhattan, but it repeatedly refused to allow BofI's process server to enter the premises. On December 5, 2015, BofI ultimately served the Subpoena on Seeking Alpha by effectuating service on Seeking Alpha's Vice President of Sales at her home.

On December 17, 2015, Seeking Alpha responded to the Subpoena with a letter from its counsel stating objections to the Subpoena while failing to produce any documents. The parties exchanged additional letters on December 21 and 23, 2015. While BofI requested that the parties meet and confer regarding this dispute on December 23, 2015, counsel asked to delay

¹ Despite being informed on December 21, 2015 by BofI's attorneys that the address it has registered with the New York Department of State is incorrect, Seeking Alpha continues to list that address with the Department of State as of January 21, 2016.

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Hon. Loretta A. Preska
January 22, 2016
Page 2

the telephonic meet and confer conference to January 6, 2016. During that conference, Seeking Alpha once again refused to comply with the Subpoena. BoFl initiated this action by filing its motion to compel compliance with the Subpoena (the "Motion") on January 20, 2016.

Seeking Alpha's request to adjourn the hearing on BoFl's motion by a month should be denied on several grounds. First, Seeking Alpha's argument that there is no impending deadline for completion of discovery in the Underlying Action is beside the point. Mr. Erhart's potential violations of the TRO in the Underlying Action are causing irreparable harm to BoFl. BoFl is entitled to obtain the information sought by the Subpoena so it can monitor whether Mr. Erhart has violated the terms of the TRO in the Underlying Action and, if so, immediately initiate contempt proceedings.

Second, Seeking Alpha's counsel failed to meet and confer telephonically regarding this request and simply sent an email requesting a one month delay in the briefing schedule due to "conflicts in scheduling over the next few weeks[.]"

Finally, this dispute has been pending since Seeking Alpha served its objections on December 17, 2015. Seeking Alpha did not make a motion to quash or a motion for a protective order during that time, and there is no reason to delay the adjudication of BoFl's straightforward Motion any further. Moreover, Seeking Alpha has not set forth any specific reason why it requires another week to respond to the Motion after it has already been provided with two weeks to respond. In fact, the current schedule allows for the motion to be heard before Seeking Alpha's counsel leaves the country on February 15 for the remainder of the month. Seeking Alpha's request to continue these proceedings so that it can file a putative cross motion is irrelevant – Seeking Alpha has not articulated any basis for its putative cross motion, nor has it explained what relief it seeks.

For these reasons, BoFl respectfully requests that the Court deny Seeking Alpha's motion to extend the deadline to serve opposition papers by one week and adjourn the hearing on BoFl's motion by nearly a month.

Respectfully submitted,



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for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

cc: Louise Sommers
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